



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

JUL 24 2013

Colonel Paul B. Olsen, P.E.
District Engineer
U.S. Army Corps of Engineers
Norfolk District
Fort Norfolk
803 Front Street
Norfolk, Virginia 23510-1096

Dear Colonel Olsen:

The U.S. Environmental Protection Agency (EPA) received your May 2, 2013 Notice of Intent to Proceed (NOI) regarding Paramount Coal Company Virginia, LLC's, proposed 1,100 acre Doe Branch Surface Mine in Dickenson County, Virginia. The NOI included a copy of the draft permit and decision document for EPA review pursuant to Part IV, paragraph 3(c)(2) of the 1992 Clean Water Act (CWA) Section 404(q) Memorandum of Agreement (MOA) between the EPA and the Department of the Army.

EPA provided comment letters to the Army Corps of Engineers Norfolk District (District or Corps) on the Public Notice No. NAO-2006-5999 on November 12 and December 7, 2010. These letters expressed a number of concerns regarding the project's compliance with the CWA Section 404 (b)(1) Guidelines (Guidelines) and the potential for significant degradation of aquatic resources on-site and within the Big Sandy River watershed. As your letter indicated, both the Corps and EPA have been working diligently to resolve the issues so the project can move forward in a timely manner.

EPA appreciates the Corps' efforts to coordinate with us and to address our concerns on this project as well on many other projects. We value the good working relationship that we have with the District, and appreciate that we are able to have open and productive discussions.

As provided for under paragraph 3(d) of the MOA, I am hereby notifying you that I have determined not to request a higher level review and will not be forwarding the permit decision to the Assistant Administrator for the Office of Water with a recommendation to request review by the Assistant Secretary of the Army for Civil Works.

EPA would like to take this opportunity to address and provide final comments regarding some of the issues raised during our review of the public notice and subsequent communications with your staff.

During review and discussions, EPA raised concerns regarding potential degradation of the aquatic ecosystem and impacts to water quality from the project on-site and within the Big Sandy watershed. In response, the Corps has incorporated permit conditions that require maintenance of certain biological conditions in waters downstream from the valley fills and biological monitoring as part of permit conditions. The Corps has also included additional monitoring locations to better gauge conditions in the receiving streams. EPA also expressed concerns with the proposed use of groin ditches as replacement for lost stream structure and function. The current Compensatory Mitigation Plan does not incorporate groin ditches as part of compensatory mitigation for this project. Additional improvements to the project to better protect the environment include mitigation monitoring and adaptive management; a 20 year Declaration of Restrictive Covenant for the mitigation areas, which is being executed with surface, mineral, and gas owners; a more thorough baseline monitoring plan; an Adaptive Management Plan for excursions of baseline benthic scores during operation; and a suite of additional on-site best management practices (BMPs) designed to minimize water quality impacts.

Throughout the coordination process, EPA raised concerns regarding the large footprint of the mine and resultant impacts to over three miles of headwater streams. The Public Notice for the project reflected the current proposal of five valley fills which represented a reduction from the original proposal of eight valley fills. However, EPA continued to request additional information to support the alternatives analysis as well as identifying opportunities for additional avoidance and minimization of impacts to jurisdictional waters within the permit boundary. While the footprint of the mine remains the same, as described in the Public Notice, additional information was provided regarding the alternatives and BMPs were incorporated into the project to further minimize downstream impacts.

Given that the current peer-reviewed scientific literature has increasingly documented degradation to the aquatic ecosystem below large scale surface mining operations in Appalachia, EPA also requested the Corps consider requiring sequencing of the valley fills as a BMP to ensure significant degradation does not occur over the life of the project. See 40 C.F.R. 230.10(c). Sequencing means that multiple valley fills on a project should generally be constructed one at a time and required to demonstrate that significant degradation has not occurred downstream at each valley fill before the permittee may begin construction of a subsequent valley fill. The Corps has declined to incorporate this measure into the permit because it was determined that sequencing would be highly disruptive to the practicable execution of the operation. In addition, it was determined that these streams did not provide a sufficient level of fresh water dilution that warranted levels of protection which sequencing would provide.

While EPA acknowledges that requiring sequencing as a BMP may cause increased operator uncertainty, the Section 404(b)(1) Guidelines prohibit issuance of permits where the discharge will result in significant degradation of the receiving waters. Sequencing would help assure that the protective BMPs required by the permit actually achieve their anticipated result, which is to avoid significant degradation, particularly where the efficacy of the BMPs is not well-documented. In light of the increasing science documenting impacts from large scale surface mining operations in Appalachia, we continue to urge the Corps to consider sequencing

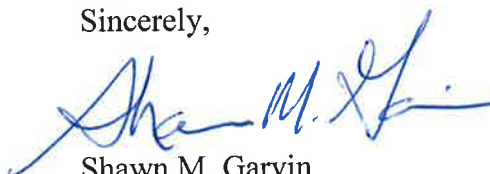
of valley fills in appropriate future circumstances. In addition, given the extent of the proposed impacts, it is unclear whether the mitigation proposal, as currently drafted, would serve as a basis for supporting a Finding of No Significant Impact; therefore, we suggest the Corps reevaluate the NEPA analysis for this project.

The considerations embodied in Sections 402 (NPDES) and 404 of the CWA are different, and the two provisions impose different requirements. Accordingly, our decision as to the 404 permit should not be construed as a finding that this project satisfies Section 402 of the CWA. In addition, the Doe Branch draft NPDES permit, VA0081946, remains subject to an outstanding specific objection issued pursuant to Section 402(d) of the CWA and EPA's regulations at 40 CFR 123.44. Pursuant to 40 CFR §§ 122.4(c) and 123.44, a final NPDES permit may not be issued unless and until the process pursuant to Section 402(d) and 40 CFR 123.44 is complete.

Again, thank you for your efforts. EPA appreciates the opportunity to provide comments in support of our collaborative efforts on this project. We hope that EPA and the District will continue to build on these efforts to positively affect future projects, protect waters of the United States, and ensure effective protection of the human environment and water quality.

If you have any questions, please do not hesitate to contact me or have your staff contact Mr. John Pomponio, Director of the Environmental Assessment and Innovation Division, at 215-814-2702.

Sincerely,



Shawn M. Garvin
Regional Administrator

